

**Court of Appeals, State of Michigan**

**ORDER**

Daniel E Galeski v Mark Wajda

Docket No. 260878

LC No. 03-341464

Brian K. Zahra  
Presiding Judge

Mark J. Cavanagh

Donald S. Owens  
Judges

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The Court orders that the motion for reconsideration is GRANTED, and this Court's opinion issued August 23, 2005, is hereby VACATED. A new opinion is attached to this order.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 01 2005  
Date

Sandra Schultz Mengel  
Chief Clerk

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DANIEL E. GALESKI, Personal Representative of  
the Estate of BARBARA L. HALL, Deceased,

UNPUBLISHED  
August 23, 2005

Plaintiff-Appellee,

v

No. 260878  
Wayne Circuit Court  
LC No. 03-341464-NI

MARK WAJDA and HELEN WAJDA,

Defendants,

and

JUDY STEMPIEN,

Intervening Party-Appellant.

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Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Intervener Stempien appeals by leave granted from a circuit court order granting plaintiff's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

William and Barbara Hall died in an automobile accident. Plaintiff filed this wrongful death action on behalf of Barbara Hall's estate. Plaintiff and defendants settled the case and sought court approval of the settlement. Stempien, William's daughter and Barbara's stepdaughter, intervened, claiming a right to a share of the proceeds under MCL 600.2922(3)(b). The trial court ruled that Stempien did not qualify for benefits under the statute and granted plaintiff's motion for summary disposition.

We review a trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Statutory interpretation is a question of law that we also review de novo. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

The persons who may be entitled to damages in a wrongful death action are identified by MCL 600.2922(3), which provides in part:

(a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.

(b) The children of the deceased's spouse.

In its order, the trial court declared that Stempien was not a person entitled to damages on the ground that she was not a child of Barbara's spouse under MCL 600.2922(3)(b) because William was presumed to have predeceased Barbara under MCL 700.2104, § 2104 of the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.* The trial court erred in its application of EPIC § 2104. First, MCL 600.2922 states that the rules governing intestate succession, of which EPIC § 2104 is one, only apply if there is no surviving spouse, children, parents, siblings, etc., and it is undisputed that Barbara's mother survived her. Second, EPIC § 2104 would not, by its terms, govern who is a "spouse" under MCL 600.2922(3) because it is to be used only "for purposes of homestead allowance, exempt property, and intestate succession," none of which are at issue here. Nevertheless, we hold that the trial court properly granted plaintiff's motion.<sup>1</sup>

For Stempien to be entitled to damages for Barbara's death, she must be a child of Barbara's spouse. MCL 600.2922(3)(b). "A 'spouse' is a married person." *In re Combs Estate*, 257 Mich App 622, 625; 669 NW2d 313 (2003). A marriage legally terminates upon the death of a spouse. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). Because the Halls died simultaneously, the marriage immediately terminated. Therefore, at the time of her death, Barbara no longer had a spouse. Consequently, Stempien was not a child of Barbara's spouse and was not entitled to a share of the proceeds.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Donald S. Owens

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<sup>1</sup> If the trial court reached the right result, albeit for the wrong reason, we will affirm the trial court's decision. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).